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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,312	07/07/2003	W. John Gardenier	1442.041	8270
23405	7590	03/24/2005	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203			LE, HUYEN D	
		ART UNIT	PAPER NUMBER	
		3751		

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SN

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/614,312	GARDENIER, W. JOHN	
	Examiner Huyen Le	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 December 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-42 and 49-54 is/are pending in the application.
- 4a) Of the above claim(s) 49-54 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-42 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/07/03</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of invention I, claims 1-42 in the reply filed on 12/17/04 is acknowledged. The traversal is on the ground(s) that the inventions are not distinct. This is not found persuasive because the applicant does not specifically point out why the inventions are not distinct.

The requirement is still deemed proper and is therefore made FINAL.

New claims 49-54 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to the nonelected invention.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 4 recites the limitations "the second pressure drop" in line 1 and "the first pressure drop" in line 2. There is insufficient antecedent basis for these limitations in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 6-8, 10-15, 17-19, 21-38 and 40-42 are rejected under 35

U.S.C. 102(b) as being anticipated by Henkin et al (4,726,080).

The Henkin et al reference discloses a system for providing pressurized water to a set of water inlets in a bathing enclosure comprising: at least one of a source of pressurized water 40, at least one manifold 76 having at least one inlet in fluid communication with the at least one source of pressurized water and a plurality of outlets in fluid communication with the set of water inlets 30,32, and a user-operable diverter 62 configured to divert at least some of the pressurized water away from the manifold 76 and to the bathing enclosure 23.

Regarding claims 2, 13, the user-operable diverter 62 is positioned upstream of the manifold 66.

Regarding claims 3, 14, the user-operable diverter 62 comprises a variable user-operable diverter.

Regarding claims 4, 15, the set of water inlets 30, 32 comprise a plurality of first water inlets having a first pressure drop to the flow of water therethrough, and wherein the bathing enclosure comprises at least one second water inlet 50 comprising a second pressure drop to the flow of water therethrough, wherein the user-operable diverter diverts at least some of the pressurized water to the at least one second water inlet 50 of the bathing enclosure wherein the second pressure drop is less than the first pressure drop because first water inlets comprises a plurality of openings around the tub causing more pressure drop along the path.

Regarding claims 6, 17, the system further comprises at least one conduit 54 between the source of pressurized water 40 and the manifold inlet 66, wherein the user-operable diverter is in fluid communication with the conduit 54.

Regarding claims 7, 18, the system further comprises at least one conduit 108 positioned between the manifold outlet and the set of water inlets 30.

Regarding claims 8, 19, the user-operable diverter 62 comprises a valve 410.

Regarding claims 10, 21, the bathing enclosure comprises at least one foot well, wherein the user-operable diverter 62 diverts water to the one foot well.

Regarding claims 11, 22, the bathing enclosure comprises a tub.

Regarding claims 23-34, the method for pressurizing water to a set of water inlets in a bathing enclosure is inherently performed during the installation and normal use of the system.

Regarding claim 35, the system includes a one single speed pump (col. 12, lines 29-32).

Regarding claim 37, the valve 410 has a tapered opening 422 constituting a variable pressure relief valve.

Regarding claim 40, the bathing enclosure comprises at least one foot well, wherein the user-operable diverter 62 diverts water to the one foot well.

Regarding claim 41, the bathing enclosure comprises an end opposite the faucet end wherein a user can lean against the wall constituting at least seat.

Regarding claim 42, the bathing enclosure comprises a tub.

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7. Claims 1-4, 6-8, 10-15, 17-19, 21-38, 40 and 42 are rejected under 35

U.S.C. 102(b) as being anticipated by Tobias et al (5,115,974).

The Tobias et al reference discloses a system for providing pressurized water to a set of water inlets 62 in a bathing enclosure comprising: at least one source of pressurized water 30, at least one manifold 52 having at least one inlet in fluid communication with the source of pressurized water 30 and a plurality of outlets 60 in fluid communication with the set of water inlets 62, and a user-operable diverter 38 configured to divert at least some of the pressurized water away from the manifold 52 and to the bathing enclosure 12.

Regarding claims 2, 13, the user-operable diverter 38 is positioned upstream of the manifold 52.

Regarding claims 3, 14, the user-operable diverter 38 comprises a variable user-operable diverter.

Regarding claims 4, 15, the set of water inlets 62 comprise a plurality of first water inlets having a first pressure drop to the flow of water therethrough, and wherein the bathing enclosure comprises at least one second water inlet 36 comprising a second pressure drop to the flow of water therethrough, wherein the user-operable diverter diverts at least some of the pressurized water to the at least one second water inlet 36 of the bathing enclosure wherein the second pressure drop is less than the first pressure drop because first water inlets 62 comprises a plurality of openings.

Regarding claims 6, 17, the system further comprises at least one conduit 24 between the source of pressurized water 30 and the manifold inlet 52, wherein the user-operable diverter 38 is in fluid communication with the conduit 24.

Regarding claims 7, 18, the system further comprises at least one conduit (channel) positioned between the manifold outlet 60 and the set of water inlets 62.

Regarding claims 8, 19, the user-operable diverter 38 comprises a valve.

Regarding claims 10, 21, the bathing enclosure comprises at least one foot well, wherein the user-operable diverter 38 diverts water to the one foot well.

Regarding claims 11, 22, the bathing enclosure comprises a pool.

Regarding claims 23-34, the method for pressurizing water to a set of water inlets in a bathing enclosure is inherently performed during the installation and normal use of the system.

Regarding claim 35, the system includes a one single speed pump.

Regarding claim 37, the valve 38 is a variable pressure relief valve.

Regarding claim 40, the bathing enclosure comprises at least one foot well, wherein the user-operable diverter 38 diverts water to the one foot well.

Regarding claim 42, the bathing enclosure comprises a pool.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 4, 16 and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Henkin et al (4,726,080).

Although the Henkin et al reference does not specifically disclose that the second pressure drop of the second water inlet is at least 50 percent less than the pressure drop across the first set of water inlets, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select pressure drop for the second inlet within a certain range to best fit a particular a water system for a bathing device and to optimize the performance. See In re Aller, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

10. Claims 4, 16 and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Tobias et al (5,115,974).

Although the Tobias et al reference does not specifically disclose that the second pressure drop of the second water inlet is at least 50 percent less than the pressure drop across the first set of water inlets, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select pressure drop for the second inlet within a certain range to best fit a particular a water system for a bathing device and to optimize the performance. See In re Aller, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

11. Claims 9, 20 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobias et al (5,115,974).

Although the Tobias et al reference shows only one manifold for creating water effect having one pump and one diverting valve, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide more than one Tobias water manifolds with pumps and diverting valves to further enhance water effect a swimming pool. See St. Regis Paper Co. v. Bemis Co. 193 USPQ 8 (duplication of parts for enhanced effect involves only routine skill).

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Gedouin and Shiminzu references show systems for providing pressurized water to bathing devices having manifolds and diverting valves.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Huyen Le  
Examiner  
Art Unit 3751

HL

March 20, 2005